

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH AT NAGPUR

Writ Petition No.8306 of 2019
Hemendra Agrawal Vs. Kiran Senad and others

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

Mr. S.M. Prasad, Advocate for the petitioner
Mr. S. S. Sahare, Advocate for the respondent

CORAM : MANISH PITALE, J.

DATED : JANUARY 17, 2020

By this writ petition, the petitioner (original plaintiff) has challenged order dated 18/11/2009, passed by the Court of District Judge – 10, Nagpur (Appellate Court), whereby application seeking appointment of Commissioner under Order 26 Rule 9 of the Civil Procedure Code (Exh.13), has been rejected. Although this Court has not issued notice in this petition, the respondents have appeared *suo motu* through counsel, contending that the pendency of the present writ petition before this Court is unnecessarily delaying proceedings before the Appellate Court.

2. The learned counsel for the petitioner submits that by appointment of Commissioner as sought by the petitioner, no prejudice would be caused to the respondents and that in the interest of justice the said application ought to have been allowed.

3. A perusal of the material on record shows

that the petitioner has filed suit for declaration, possession and permanent injunction claiming that the petitioner was entitled to a decree of possession in respect of the suit property, claiming interest on the basis of a registered sale deed. The Trial Court upon appreciation of oral and documentary evidence found that the petitioner had not been able to support his claim at all and that, in fact, the respondents had proved their claim in respect of the suit property on the basis of a registered sale deed.

4. In the pending appeal before the Appellate Court, the petitioner moved the aforesaid application at Exh.13 for appointment of Commissioner, claiming that the measurement of the property would assist the Appellate Court in properly deciding the controversy between the parties.

5. While considering the said application, the Appellate Court found that there was no dispute about the dimensions, measurement, boundaries and the situation of the suit property. It was found that the property in dispute was well identifiable since the boundaries of the suit property were clearly stated, as provided under Order 7 Rule 3 of the Code of Civil Procedure. Once the identity of the property was found to be not in dispute before the Appellate Court, no purpose would be served by appointment of Commissioner.

6. In fact, in the last paragraph of the said order, it was recorded that filing of such application appeared to be an attempt on the part of the petitioner to delay the proceedings before the Appellate Court.

7. On a pointed query put to the learned counsel for the petitioner as to whether the dispute between the parties concerned two contiguous plots of land, boundaries of which were not identifiable, necessitating appointment of the Commissioner, the learned counsel for the petitioner submitted that such was not the case. The material on record demonstrates that the petitioner had made claim on the suit property on the basis of documents and his claim was rejected by the Trial Court. The Appellate Court could certainly decide the controversy between the parties on the basis of evidence and material on record of the Trial Court. Therefore, no case for appointment of Commissioner has been made out and this Court has not found any error in the impugned order.

8. Accordingly, the writ petition is dismissed.

9. The Appellate Court is directed to decide the appeal on merits as expeditiously as possible and in any case within a period of four months from today.

JUDGE